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COMMITTEE AGAINST TORTURE

Seventh session

SUMMARY RECORD OF THE 95th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 15 November 1991, at 10 a.m.

Chairman: Mr. VOYAME

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued) (agenda item 4)

Initial report of Uruguay (CAT/C/5/Add.27)

1. At the invitation of the Chairman, Mr. Lacarte-Muró and Mr. Chabén (Uruguay) took places at the Committee table.

2. Mr. LACARTE-MURO (Uruguay) said that, at the current stage, his delegation had no further information to add to its Government's report (CAT/C/5/Add.27). It would reply to the questions put by the members of the Committee, consult its Minister for Foreign Affairs for any further information that might be necessary and communicate it to the Committee.

3. Mr. GIL LAVEDRA (Country Rapporteur) welcomed the Uruguayan report, which contained comprehensive information on the manner in which Uruguay implemented the Convention. Moreover, the judgements communicated to the Centre for Human Rights and listed on page 26 of the report also contained useful information.

4. Part I of the report gave a good explanation of the relationship between international and domestic law. Article 332 of the Constitution which stated that any lack of corresponding regulations would be made good by application of the basic features of analogous laws, general principles of law, and generally accepted legal doctrine, was a very unusual provision. The judgements communicated by the Government of Uruguay also indicated that the provisions of international human rights instruments were applied by the Uruguayan courts.

5. He asked what rules governed the pre-indictment period, during which ill-treatment often occurred, which authority was empowered to order arrests, how long the period was before the police had to bring a person before a court and who ordered detention incommunicado and how long it could last. Was there a rule on compulsory medical examinations?

6. He had some concerns about decree No. 690/80, which empowered the police to investigate a person's background. The additional material which had been supplied to the Committee and was available from the Centre for Human Rights referred to the rejection of an application for amparo made by a person who had alleged persecution by police, which had detained him for investigation into his background without bringing him before a court. What were the powers of the police to detain persons for inquiries into their background, how long could such detention last and how were such powers monitored?

7. He also wished to know what principles governed the regime of detention and what guarantees were provided for detainees and prisoners. Annex 1 of the documents available in the Centre for Human Rights contained a judgement of the Third Rota Criminal Court of Appeal rejecting an application for amparo made by a court-appointed lawyer against discriminatory measures which had allegedly resulted in ill-treatment, including solitary confinement for more than 90 days and deprivation of visits and books, on the basis of the 1938 Organizational and Administrative Regulations. The Court had rejected the

application for amparo on the grounds that it was not the appropriate channel for challenging a general provision. Many of the issues raised in that case were relevant to the Committee's concerns, for the Court had decided that the 1938 Regulations allowed discriminatory measures that were incompatible with the Constitution. Under articles 316 and 317 of the Code of Criminal Procedure, moreover, a judge was authorized to monitor prison conditions. In the Court's judgement, however, it had been stated that the judge had no power to put an end to any unfair treatment. Did the Government of Uruguay tend to amend the relevant provision? The judgement also appeared to establish that amparo could not be a remedy against an unconstitutional law, but, in most countries, the reverse was true.

8. Turning to articles 1 and 4 of the Convention, he noted that paragraph 39 of the report stated that "the unlawful behaviour classified as the international offence of torture became an additional part of Uruguayan criminological typology", but he considered that a provision of domestic law was necessary to prohibit the crime of torture.

9. He did not agree that the provisions of the Penal Code quoted in paragraphs 8 to 11 of the report covered all the requirements of article 1 of the Convention. Under article 162 (Abuse of office in cases not specifically provided for by law) and article 286 (Abuse of authority against prisoners), the person inflicting torture had to be a public official, whereas that was not the case under the Convention. In addition, the harshest penalty laid down by those provisions was two years' rigorous imprisonment, which did not take account of the grave nature of the offence as required by article 4, paragraph 2, of the Convention.

10. With regard to article 3 of the Convention, the report stated that Uruguay was a party to the 1951 Convention relating to the Status of Refugees and to its Protocol. However, the Convention against Torture prohibited non-refoulement not for political reasons, but on the grounds that the person involved might be subject to torture on his return. The incorporation of the Convention into Uruguayan domestic law might well cover that point, but he would like clarification in that regard.

11. The provisions relating to extradition that were quoted in the report in connection with articles 5 to 8 of the Convention might have been simplified by a reference to article 10, paragraph 7, of the Uruguayan Penal Code, bearing in mind the direct applicability of the Convention. He stressed that there was a need for a provision establishing the appropriate penalty for torture, since article 32 of the Uruguayan Code of Criminal Procedure merely stated that, where no treaty was applicable, extradition might be granted only if the offences involved were punishable by a penalty of not less that two years' imprisonment.

12. In connection with article 11 of the Convention, he asked whether the police were empowered to interrogate during the pre-indictment period and, if so, on the basis of what regulations.

13. The rules governing statements described in the report did not fully correspond to the requirements of article 15, but the matter might be covered by the incorporation of the Convention into domestic law.

14. He asked what political motives had led Uruguay to adopt the Immunity from Prosecution Act ("Ley de caducidad de la función punitiva") and what effect that Act had had on public opinion?

15. What had been the experience of the Prosecutor's Office since the beginning of 1991 as far as more effective supervision of police activities was concerned?

16. He had received reports that, in 1990, public demonstrations had been held in Uruguay to protest the death of two young men and he wished to know what had happened during those demonstrations and what action the Government had taken in response. He also wished to know the outcome of the Supreme Court's inspection of Libertad Prison in November 1990. He was concerned about reported suicides at Migueletes Prison and wondered if the Uruguayan delegation could comment on those reports.

17. Mr. DIPANDA MOUELLE (Alternate Country Rapporteur) thanked the Uruguayan delegation for its report. The part containing information of a general nature was extremely interesting and, except for a few problems of interpretation, the legislation appeared to be satisfactory. He welcomed the safeguards represented by the Office of the Visiting Magistrate and the provisions relating to habeas corpus and amparo.

18. Referring to paragraph 11 of the report and article 317, paragraph 3, of the Penal Code relating to premature delivery by a female victim, he asked whether the penalty was still from 20 months' ordinary imprisonment to 6 years' rigorous imprisonment if the newborn child died.

19. With regard to paragraph 14 of the report, he asked whether there were any political prisoners in Uruguay and, if so, how many and under which jurisdiction they fell. He also wished to know whether the independence of the judiciary was guaranteed, how judges were appointed, whether they could be removed, what their retirement age was and how many courts of appeal there were. Since Uruguayan courts of appeal had national jurisdiction, could a case be brought before any of them?

20. He shared Mr. Gil Lavedra's concerns with regard to part II of the report and believed that the definition of torture should be incorporated into Uruguay domestic legislation so that the moral, material and psychological consequences of torture could be prevented.

21. Paragraphs 42 to 44 of the report seemed to apply more to article 10 than to article 2 of the Convention.

22. Paragraph 47, which read "... in the event of an emergency due to very special circumstances, the Constitution thus allows the suspension of security of person", was contrary to article 2, paragraph 2, of the Convention, which stated that no exceptional circumstances might be invoked as a justification of torture.

23. Article 3 of the Convention referred to expulsion, return or extradition, but the report contained no information on expulsion.

24. The comments on article 7 did not make it clear how the principle of aut dedere aut judicare was being implemented.

25. With respect to article 9, he asked whether there was any mutual judicial assistance with countries with which Uruguay had no treaty relations.

26. Concerning article 10, paragraph 2, the report contained no reference to the human rights training of medical personnel, which was particularly important in preventing torture.

27. In connection with article 11, he requested a brief description of the rules of procedure for the questioning of suspects.

28. Referring to article 15, he asked whether there had been any cases in which it had been established that a statement had been made as a result of torture and what decisions had been taken by the courts. What were the rules governing the submission of evidence in Uruguayan law?

29. With respect to article 16, he requested a brief description of the texts governing the treatment of prisoners: were minors separated from adults, women from men, the accused from the sentenced? Had there been any cases of torture and, if so, what had been the outcome?

30. Mr. SORENSEN said that he had been particularly interested by Uruguay's report on account of his own experience at a centre for the rehabilitation of torture victims in Denmark, where a number of Uruguayan torture victims had been treated, and he welcomed the changes that had taken place in Uruguay in 1985 and 1986.

31. Noting that paragraph 6 of the report referred to the 1889 Penal Code and to the current Penal Code, which had come into force through Act No. 9,414 of 29 June 1934, he pointed out that most of the provisions described in the report as affording protection against torture had been in force before 1985, but had proved inadequate to prevent the widespread torture that had occurred. He asked what changes in those provisions had been made since 1985 to remedy their shortcomings, which apparently continued to exist, as a report by Amnesty International had alleged that torture still occasionally occurred in Uruguay.

32. With regard to paragraph 11, the provisions of article 317, paragraph 2, of the Penal Code regrettably appeared to exclude psychological injury, as they referred only to "permanent injury to a sense or to an organ". The last sentence of paragraph 47, which stated that the measures taken in the event of an emergency could not serve as a pretext to commit abuses against the physical integrity of detainees, also seemed to leave room for psychological abuse.

33. Paragraphs 27 and 68 of the report provided information on the remedies available to victims of torture and on the question of compensation and he asked for confirmation that a victim of torture would be entitled both to rehabilitation and to compensation from the State without having to sue his torturer.

34. The situation with regard to exoneration from punishment for persons who committed acts of torture on the orders of a superior was rather vague. Although paragraph 51 stated that the Convention would supersede domestic law, he doubted whether a police officer who was ordered to commit an act of torture would invoke the Convention as grounds for refusing to do so or whether he would even have heard of the Convention.

35. The absence from the provisions adopted in accordance with article 10 of the Convention of any educational measures for medical personnel was a serious shortcoming. He recognized that it was no easy task to change from a situation in which torture was a common practice to one in which it was prohibited, but that very difficulty made educational measures all the more vital. According to the Uruguayan Medical Association, some 600 doctors had been involved in acts of torture in Uruguay. Many of them were anaesthetists who were still practising and many former victims were afraid even to seek ordinary medical treatment in Uruguay for fear of falling into the hands of their former torturers. That issue also raised the important question of impunity: the Uruguayan Medical Association had argued that doctors who had been involved in torture should not be allowed to practise under the new medical health system introduced in Uruguay two years previously, but it had been overruled by Parliament, even though it had collected 500,000 signatures for a referendum on the Clean Slate "Punto Final" Act, which had guaranteed immunity from prosecution for persons guilty of torture under the former regime. The Act also raised the basic question whether democracy could be firmly established as long as those guilty of torture remained unpunished.

36. Ms. CHANET noted that, although the report described the general legal framework for protection against torture, it did not mention any article of the Constitution which related specifically to torture. She asked whether there was any such article or whether acts of torture were merely covered by the provisions of general law.

37. She agreed with Mr. Gil Lavedra and Mr. Dipanda Mouelle that the assurance given in paragraph 38 of the report that "the types of conduct described by the international Covention nevertheless constitute offences and are severely punished by the Uruguayan judiciary" seemed to indicate that Uruguayan law was not in conformity with the Convention, as the provisions of the Penal Code described in the report did not fully cover the definition of torture contained in the Convention. There were some forms of torture which left no trace and, consequently, the provisions relating to serious injury were inadequate. Moreover, article 286 of the Penal Code provided for rather light sentences ranging from six months' ordinary imprisonment to two years' rigorous imprisonment for abuse of authority and the definition of abuse of authority under Uruguayan law did not seem to be in conformity with article 1 of the Convention or to cover the use of torture to obtain information. She therefore requested the Uruguayan delegation to provide further information on lack of conformity between Uruguayan legislation and the Convention.

38. A further shortcoming of Uruguayan domestic legislation was apparent in the provisions relating to article 2, paragraph 3, of the Convention, under which an order from a superior officer or a public authority could not be

invoked as a justification of torture. Although paragraph 51 of the report stated that the Convention would supersede the relevant provisions of domestic law, which were clearly inadequate, it was not obvious whether those provisions had actually been repealed. In view of past experience in Uruguay, their formal abrogation would be desirable.

39. The explanations given in paragraph 52 in connection with article 3 of the Convention referred to the question of refugees, who were in a different category from persons subject to expulsion, and she asked whether there had been any cases in which Uruguay had refused to expel or to return a person who was in danger of being subjected to torture and any cases in which persons had been expelled or returned to a country that provided sufficient guarantees for their security, rather than to their country of origin.

40. With regard to the establishment of Uruguayan jurisdiction over acts of torture, she noted from paragraph 55 of the report that Uruguayan jurisdiction extended to all offences committed in the national territory as well as to those committed abroad in the cases specified by law or by treaty and she asked whether that meant that Uruguay applied the principle aut dedere aut judicare and whether it was possible for a foreigner who had committed an act of torture against another foreigner on foreign territory to be tried for his act in Uruguay.

41. She shared Mr. Sorensen's view that the failure to provide education and information for medical personnel regarding the prohibition against torture was a serious shortcoming and she stressed the need to ensure that such training was offered. Referring to article 11 of the Convention, she wished to know the maximum period of custody, whether persons could be held incommunicado and, if so, for how long, at what point detainees were entitled to the assistance of a lawyer and whether there were any provisions regarding the periodicity of interrogation during custody and judicial control.

42. She also inferred from paragraph 28 of the report that medical examination during custody was unfortunately not systematic and asked for confirmation of whether that was the case. Conditions of detention during custody were of vital importance, as it was at that stage in proceedings that persons were most vulnerable to acts of torture. The Committee had received information from a number of non-governmental organizations concerning ill-treatment in police stations and cases in which persons had died during custody. She invited the delegation to inform the Committee whether any investigations had been conducted into those cases and other complaints of ill-treatment. She also asked whether there was a police authority to monitor police activities and ensure that complaints against the police would be examined impartially and whether there were any special provisions to protect the mentally ill in Uruguay.

43. Mr. MIKHAILOV thanked the delegation and the Government of Uruguay for the report, which gave a full description of Uruguayan legislation that was relevant to the Convention. He inquired whether there had been any actual cases of torture in Uruguay in recent years and, if so, what action the Government had taken in connection with them.

44. His main conclusion, which had already been mentioned by other members of the Committee, was that paragraph 3 of the report, according to which there was no specific offence designated as "torture" under domestic law, appeared to contradict the claim made in paragraph 39 that unlawful behaviour classified as the international offence of torture had become an additional part of Uruguayan criminological typology. That contradiction was confusing because the reference to the "international offence of torture" did not answer the question whether torture was also a domestic offence and the Uruguayan delegation should clarify that point. Many of the provisions of domestic law mentioned in connection with the Convention were of a general nature and the delegation should inform the Committee whether the Government intended to classify torture as a specific offence under its domestic law. He also asked since when the death penalty had been prohibited by the Uruguayan Constitution.

45. Although the difference between habeas corpus and amparo was explained in general terms in paragraphs 32 to 35 of the report, he would welcome a more detailed explanation of how those remedies were actually applied in Uruguay. He wondered whether the provisions relating to abuse of authority and described in paragraph 41, whereby the First Rota Criminal Court of Appeals made its own direct evaluation of cases and prosecuted police officials for abuse of authority, were adequate to prevent such occurrences. He suggested that it would be preferable for a specific provision to be incorporated in the Penal Code.

46. Mr. BURNS said that Uruguay deserved commendation for being one of the few countries that had not made a reservation to article 20 of the Convention and for having made the declarations required by articles 21 and 22, thus recognizing the competence of the Committee to receive and consider communications from or on behalf of individuals. As a result, Uruguay had made the most positive commitment to the Convention of any country.

47. He nevertheless wished to know under what circumstances a detainee could be held incommunicado, for how long and by whom and what safeguards had been built into the system of detention. The explanations in the report concerning the use of involuntary confessions and the respective responsibilities of the police and the examining magistrate had caused him to have some doubts and he asked whether involuntary confessions were admissible in Uruguay as evidence before civil, criminal or military courts.

48. Had the amnesty introduced after the end of the military regime extended both to civil and to criminal liability? Now that Uruguay was a democratic regime committed to the ideals embodied in the Convention, were the same officials, judges, doctors and lawyers as under the previous regime responsible for eliminating torture? Had the present Government taken any steps to dismiss persons who had been involved in acts of torture under the previous regime or had it been prevented from doing so by the amnesty act? If so, he was sceptical about the effectiveness of educational measures regarding the prohibition against torture and asked for assurances that alternative steps had been taken.

49. Mr. KHITRIN welcomed the report, which conclusively showed that Uruguay was endeavouring to comply with its obligations under the Convention.

Paragraph 30 described the judicial safeguards during the serving of the sentence in terms that were all very well on paper, but the Uruguayan delegation should inform the Committee how the judges responsible for supervision actually carried out their task, what their powers were and in how many cases they had brought prosecutions against officials for ill-treatment of detainees.

50. Article 150 of the Penal Code concerned criminal conspiracy, a crime that was extremely difficult to prove and he asked how that article worked in practice, how many persons had been prosecuted under it and whether there might not be an ulterior motive behind it.

51. Paragraph 46 of the report stated that individual security could be suspended only with the consent of Parliament and subject to the supervision of a Permanent Commission. He asked who appointed the Permanent Commission, to whom it was accountable and what its functions were. The very special circumstances under which the Constitution could be suspended and which were referred to in paragraph 47 also required clarification, as did the provisions which were referred to in paragraph 48 on exoneration of subordinates from liability for acts of torture on the grounds of obedience to a superior, which were clearly not in conformity with the Convention and which should be amended. He requested further details on the responsibilities and powers of the Office of the Public Prosecutor mentioned in paragraph 66 and on whether the Office could arrest and indict persons and challenge decisions taken by courts.

52. Mr. PERLAS said that, as a physician, he endorsed the views expressed by Mr. Sorensen. It was very disturbing that, in Uruguay, the medical profession now seemed to be suspect by its very nature and it was vital that everything possible should be done to correct that situation.

53. The CHAIRMAN thanked the Uruguayan delegation for a very interesting and full report. He was pleased to note that the Government had not only ratified the Convention, but had also made the declarations provided for under articles 21 and 22.

54. However, he agreed with other members that the crime of torture did not seem to be sufficiently penalized under Uruguayan law, even if all the penalties referred to in the report were combined. For instance, it would appear from paragraph 11 that even serious and repeated torture, which nevertheless left no trace, would be punished under article 316 of the Penal Code by only three to twelve months' ordinary imprisonment, which seemed a very mild sentence. Even if the offence was aggravated by having been committed by a public official, the maximum penalty under article 320 of the Penal Code would be 16 months, which was also very mild.

55. With reference to paragraphs 46 and 47, he shared the doubts expressed by Ms. Chanet, Mr. Sorensen and Mr. Dipanda Mouelle concerning the circumstances under which security of person could be suspended. Suspension on the grounds indicated did not seem to be compatible with Uruguay's Constitution.

56. The position regarding obedience to a superior seemed somewhat complex. It was stated in paragraph 48 of the report that the Penal Code exonerated from criminal liability any act of obedience to an order, provided that that order came from a competent authority. On the other hand, paragraph 50 stated that Uruguayan legal thinking agreed that a subordinate could refuse to carry out an order that had an unlawful content. There was a danger that exoneration from liability in such circumstances would make things far worse for the subordinate and the statement in paragraph 50 did not seem very convincing. International law could be assumed to have precedence over domestic law, if directly applied, but might not such application aggravate the situation if it came into conflict with a country's Penal Code? In such circumstances, could a subordinate invoke the concept of an error of law, if that concept was recognized in Uruguay?

57. It would appear from paragraphs 57 to 60 of the report that article 6 of the Convention was not fully applied in Uruguay, since that article provided that, if there was even a suspicion that a person in Uruguayan territory was guilty of acts of torture, there was no need for any formal application for extradition. It was also not clear from those paragraphs how article 9 of the Convention was applied, unless it could be assumed to apply directly. If that was the case, so much the better, but if it was not, the legislation would appear to be defective in that regard.

58. Lastly, he associated himself with the comments made by Mr. Burns, Mr. Sorensen and Mr. Khitrin on the subject of the amnesty law, and would appreciate further information on that point.

59. Mr. LACARTE-MURO (Uruguay) said that, by its acceptance of articles 21 and 22 of the Convention, his country had opened its doors wide to a full and frank dialogue with the Committee. It now welcomed discussion not only on the issues covered by the Convention, but also on questions relating to human rights in general.

60. In order to be able to provide accurate answers to the often detailed and technical questions asked by the members of the Committee, he would appreciate being given more time to allow for consultations with his country's authorities.

61. The CHAIRMAN said that, although it was the Committee's usual practice to hear the replies of States parties to questions during the course of the same day, he appreciated that the Uruguayan representative would need more time. Accordingly, Uruguay's replies could be scheduled for the morning of Thursday, 21 November 1991.

62. Mr. Lacarte-Muró and Mr. Chabén (Uruguay) withdrew.

The meeting was suspended at 11.55 a.m. and resumed at 12.05 p.m.

Initial report of Australia (CAT/C/9/Add.8)

63. At the invitation of the Chairman, Mr. Walker and Mr. Broome (Australia) took places at the Committee table.

64. Mr. WALKER (Australia), introducing the initial report (CAT/C/9/Add.8), said that his country unequivocally supported the work of the Committee and welcomed the opportunity for a constructive dialogue with it.

65. It was his Government's policy to ensure, before ratifying a convention, that Australia was in a position to comply with the international obligations it would assume under it. In the case of the Convention against Torture, existing domestic law was in most respects adequate for compliance. Acts which would amount to torture would in general be covered by such offences under criminal law as assault, infliction of bodily harm, sexual assault, rape, threat to kill or injure, and deprivation of liberty. Thus, a victim of the unlawful use of force could seek compensation under various criminal injuries compensation schemes or under provisions of domestic law such as a common law action in tort. Damages could be sought for both physical injury and nervous shock. However, new legislation would be needed to ensure that the Convention could be fully implemented in Australia.

66. The Crimes (Torture) Act 1988 fulfilled Australia's obligations under the Convention in relation to acts of torture committed outside the jurisdiction of State and territory criminal law. That act had made an offence of torture committed outside Australia by a person who subsequently entered the country a federal offence. In effect, it therefore made Australia's criminal law applicable to acts committed outside Australia.

67. Acts amounting to torture committed in Australia would likewise be offences under the criminal law and would be investigated and prosecuted. There were special procedures in all jurisdictions to ensure competent investigation of allegations of torture by police or prison officers. Complaints about police conduct were generally dealt with first by an internal investigation body and later reviewed or monitored by an external body such as an ombudsman. Several jurisdictions had created specific legislative schemes for investigating complaints about the police. In others, a State ombudsman had been given wide powers to investigate such complaints. Complaints about treatment in prison could be made to official prison visitors or inspectors, who were independent persons with a statutory function of visiting prisons and inquiring into the treatment and condition of prisoners. In most States, the ombudsman also had authority to deal with complaints. In the federal context, persons who believed that their human rights had been infringed could complain to the Human Rights and Equal Opportunity Commission.

68. In Australia, the military did not normally have any authority or jurisdiction over civilians. Military personnel were subject to the law of the land and could not be required to perform actions contrary to law. Even in very exceptional circumstances, when the armed forces were required to protect constitutional processes, they would be involved only after the Government of a State had made a request to the Governor-General, who would then take the necessary legal measures in accordance with procedures agreed by Parliament. Military personnel held in detention were protected under the Defence Force Instructions, which gave them the right to make complaints to the officer in charge; such complaints had to be investigated without delay.

69. Similarly, Australia's security and intelligence agencies had no powers of arrest or detention. The powers of the Internal Security Agency (ASIO) had been defined by an act of Parliament and its compliance with its legal obligations was monitored by an independent inspector-general. Members of intelligence and security agencies were in no way exempt from ordinary criminal and civil law.

70. The Committee might be interested in the findings of a recent report by the Royal Commission to investigate aboriginal deaths in custody. Although the Commission had not found that any of the deaths investigated were the result of unlawful violence or brutality by police or prison officers, it had recommended that the Government should consider acceding to the Optional Protocol to the International Covenant on Civil and Political Rights and make a declaration under article 22 of the Convention. The Commission had adopted other recommendations relating to custodial practices, sentencing and training for police and custodial personnel. Those developments would be covered in more detail in Australia's second report.

71. He was pleased to announce that the Australian Government had acceded in September 1991 to the Optional Protocol to the International Covenant on Civil and Political Rights, as recommended by the Commission. That accession was an indication of the high priority given to human rights by the federal Government.

72. The possibility of making the declaration provided for under article 22 of the Convention was currently under discussion. That demonstrated Australia's willingness to have its human rights record scrutinized.

73. His Government welcomed the opportunity for a frank and open discussion of how it was implementing the Convention. It believed that it was thus demonstrating its sincere opposition to torture and any other cruel, inhuman or degrading treatment, as well as its support for all the monitoring bodies established under the human rights treaty system.

74. Mr. BURNS (Country Rapporteur) commended the Australian delegation on its excellent and detailed report (CAT/C/9/Add.8). The Committee would welcome some explanation of how the law and, in particular, the criminal law operated under Australia's federal system. What process did the federal Government have to go through in order to obtain the consent of States to carry out measures in compliance with its international obligations? He had understood from the oral introduction that federal legislation enabled Australia to exercise extra-territorial and, indeed, universal jurisdiction where acts of torture were concerned. He had understood that such legislation would not amend State criminal codes, but would it have the effect of amending the Australian capital territory's criminal code?

75. He had been very impressed by the comprehensive system set up in Australia to protect human rights norms, particularly the federal legislative scheme, which seemed to be unique, certainly within the Commonwealth. He had also been struck by Australia's very comprehensive complaints mechanisms, both with regard to the police and with regard to prisons, and by its comprehensive criminal injuries compensation schemes, although the latter did seem to have relatively low upper limits.

76. Could the Australian representative confirm that the definition of torture contained in article 1 of the Convention had not, in fact, been directly incorporated into domestic legislation, except in so far as the jurisdictional provisions of the 1988 legislation were concerned? Regarding article 2, paragraph 60 of the report stated that the use of force was permissible "in the course of a lawful correction of a child". Did Australia still recognize corporal punishment in schools? He had been greatly struck by the statement in paragraph 67 that there were no exceptions to the prohibition of torture and that an order from a superior could not be invoked as a justification for torture. That provided very comprehensive protection against the kind of abuses that the Committee sometimes had to deal with.

77. With regard to the application of article 3, he pointed out that Australia's obligations were not confined to persons covered by the definition of refugees, but extended to persons with well-founded fears of ill-treatment on other grounds than those listed in the 1951 Convention relating to the Status of Refugees. Concerning article 5, he would like to know whether an Australian State would have the jurisdiction to prosecute for an offence committed outside Australia under the 1988 Act, along the lines indicated in paragraph 88.

78. He welcomed the statement in paragraph 97 that Australia accepted the provision of article 6, paragraph 1, that offences involving acts of torture were deemed to be extraditable under any existing extradition treaty. Did Australia have universal jurisdiction in that connection?

79. He was pleased to note from paragraph 100 that Australia had one of the most highly developed statutory schemes in the world relating to mutual judicial assistance in criminal matters. He would welcome clarification as to the scope of the provision referred to in paragraph 101, whereby persons could be compelled to give evidence in relation to the prosecution of crimes in another country.

80. With regard to paragraph 109, he wished to have more details about the legal regimes that applied to mental health institutions. For example, was electro-convulsive therapy part of the ordinary medical treatment given in such institutions and, if so, in what circumstances could it be applied? What provision was made for review in the case of persons involuntarily, or even voluntarily, detained in such institutions and what protection did they have regarding the duration and nature of their treatment? What special educational opportunities were available for medical professionals working in police stations, prisons and mental health institutions to ensure that they were made aware of their obligations to avoid ill-treatment of detainees, prisoners and patients?

81. Referring to paragraph 114, he asked whether the establishment of the post of ombudsman was a relatively recent protective measure and how wide-ranging the ombudsman's functions were.

82. Concerning the rehabilitation of victims of ill-treatment and bearing in mind that Australia was a country which received a large number of refugees,

with the result that the Australian authorities had to be concerned with refugees from countries in which a regime of torture prevailed, he asked whether the special rehabilitation centres referred to in paragraph 128 included social as well as medical services, whether they were financed by State and federal authorities or privately, how many persons benefited from such services and whether any special training was provided for medical professionals involved in treatment relating to the sequelae and trauma of torture.

83. In connection with article 15, he asked whether extorted confessions were admissible in any part of Australia. He commended the broad definition of cruel, inhuman or degrading treatment given in paragraph 132.

84. Lastly, he asked what form liaison took between the States and the federal Government, on the one hand, and the Immigration Appeal Board and the Attorney-General's Department, on the other.

85. Mr. PERLAS (Alternate Country Rapporteur) said that he endorsed Mr. Burns' request for clarification concerning the federal system in Australia. He would also like to have statistics and details of any reported cases of torture and information concerning the procedure from the time a person was taken into custody until a judgement had been handed down. He asked whether the specific crime of torture existed elsewhere than in the Australian Capital Territory.

86. Referring to article 3 of the Convention and paragraph 70 of the report, he said that he wished to know whether the extradition laws referred specifically to the situation where a person might be extradited to a country where there was a risk that he might be tortured. He asked why the list contained in paragraph 83 did not cover the same problems in all States and territories.

87. Were psychological or psychiatric reactions not regarded as falling within the categories specifically mentioned in paragraph 80 also taken into account in domestic legislation?

88. He wondered whether there was any contradiction between the statement made in paragraph 20 that in Australia treaties were not self-executing and the statement contained in paragraph 97 concerning extradition.

89. As to paragraph 109, he asked for information on whether special training was provided for physicians regarding the prohibition against torture. He also requested clarification of what was meant by "wilful neglect of a psychiatric patient". Lastly, he endorsed Mr. Burns' comments concerning the hospitalization of the mentally ill and the possibilities of appeal in respect of discharges from mental institutions.

90. Mr. SORENSEN, referring to paragraph 109, said he agreed with the view expressed by Mr. Burns and Mr. Perlas that there was a great need for medical training in relation to torture because Australia accepted large numbers of refugees, between 20 and 50 per cent of whom were estimated to have been subjected to torture. He commended the Australian authorities for having

established the specialized rehabilitation services referred to in paragraph 128 and noted that the staff of such centres might be well qualified to provide training for medical and other professionals in connection with torture.

91. Ms. CHANET, referring to paragraphs 20 to 22 of the report, asked whether Australian legislation contained any specific provision prohibiting torture. Was the Human Rights and Equal Opportunity Commission mentioned in paragraph 31 competent to hear complaints of torture or ill-treatment and had there been any specific cases of such complaints? Further clarification about the ombudsman's functions, the number of posts of ombudsman which existed and the relationship between the Australian ombudsman and the Commonwealth ombudsman would be useful.

92. In connection with articles 1 and 4 of the Convention, she endorsed the comments made by Mr. Burns and Mr. Perlas concerning the application of legislation in a federal system. It seemed to her that a person who had committed torture or inflicted suffering might be subject to legislation that varied in harshness depending on the State or territory concerned.

93. In connection with article 11 of the Convention and paragraph 110 of the report, she requested further clarification on how the internal review of rules and practices regarding the custody and treatment of persons in detention was carried out in practice. She also wished to know what stage had been reached in the work of the Royal Commission to investigate Aboriginal deaths in custody.

94. Mr. GIL LAVEDRA said that, like other members of the Committee, he would be grateful for further clarifications concerning the federal system in Australia, particularly since the provisions of the Convention were not directly applicable and special domestic legislation was required to give effect to them. The federal system which had been described was such that, without precise details of the relevant legislation in each State and territory, it was difficult to have an overall picture of the situation in Australia with regard to the provisions of the Convention.

95. He asked to what extent the constitutional provisions guaranteeing basic human rights were applicable to all States and why certain basic civil and political rights were not specifically mentioned. With regard to paragraph 24, for example, he wished to know which basic human rights were recognized in common law. As to paragraph 26, he requested information on the rules relating to the jurisdiction of federal and local courts. The statement in paragraph 30 on the major statutory protections of human rights was general and offered no specific details. What were the mandate and powers of the Human Rights and Equal Opportunity Commission, as mentioned in paragraph 31, and what was its relationship with the different States and territories? Paragraph 34 described federal legislation to protect human rights, but did not specifically refer to the prohibition against torture.

96. Referring to paragraph 44, he asked what competence the federal Parliament had in relation to criminal offences, particularly in the light of the Crimes (Torture) Act 1988. Paragraph 63 seemed to indicate that federal legislation concerning torture was related to territorial jurisdiction;

consequently, the definition of torture in each State would be of particular relevance, as it might mean that similar criminal acts would not necessarily be punished in the same way in all States. He referred in that connection to article 4, paragraph 2, of the Convention.

97. In relation to paragraph 67, he asked which legislative act contained the provision that an order from a superior officer could not be invoked as a justification of torture and whether it was valid in all States and territories. He also wished to know which legislative act contained provisions on applications for refugee status and whether or not such legislation was federal. Lastly, he requested clarification of the statement that the Crimes (Torture) Act 1988 satisfied the requirements of article 5 of the Convention. Why did paragraph 89 of the report say that article 5, paragraph 3, had no operation in relation to Australia?

The meeting rose at 1.20 p.m.